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Letter dated 27 June 2011 from the Chair of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty addressed to the delegations

The third session of the Preparatory Committee for the 2012 United Nations Conference on the Arms Trade Treaty will be held from 11 to 15 July 2011 in Conference Room 1 at United Nations Headquarters in New York. More information can be found at www.un.org/disarmament.

In order to assist States in their preparations for the upcoming session of the Preparatory Committee, I have the honour to forward for your Government's consideration draft papers on implementation and final provisions (see annex), which will be the main substantive items on the draft agenda of this meeting.

The papers are based on my interpretation of the exchange of views during the first and second sessions of the Preparatory Committee, held in July 2010 and February/March 2011 respectively. I would like to stress that the papers are drafted under my own responsibility with the sole goal of facilitating a focused and fruitful discussion during the Committee's third session. They are not intended to prejudge in any way the outcome of the discussion.

(*Signed*) Roberto García Moritán
Chair

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Annex

Draft papers on implementation and final provisions

I. Implementation

1. Each State party shall take the necessary legislative and administrative measures to adapt, as necessary, national laws and regulations to implement the obligations of this treaty.

2. The provision of this treaty shall be implemented in a manner that will avoid hampering the right of self-defence of any State party.

3. Each State party, during the implementation of its obligations under this treaty, shall assign the highest priority to ensuring that the implementation in accordance with the treaty is not discriminatory or subjective in nature, nor could represent, inter alia, political abuse.

4. Each State party shall establish a national contact point for the provision and receipt of information and requests pursuant to this treaty. Each State party shall notify the Implementation Support Unit (see article __) of its national contact point. A list of national contact points shall be maintained and distributed by the Implementation Support Unit on a quarterly basis.

A. National authority and systems: exports

5. Each State party shall establish and maintain a transparent, predictable and effective national system for authorizing and licensing the export of conventional arms under the scope of this treaty and consistent with the assessment criteria in article __.

6. Each State party shall establish a national control list of those items subject to this treaty, consistent with the terms of this treaty under article __.

7. Each State party shall take measures to ensure that it can verify or validate its authorizations. All authorizations for an export of conventional arms in accordance with the treaty must be detailed on a form and issued prior to the export. Details of the authorization shall accompany the arms shipment and be made available to transit and trans-shipment States upon request. The format, content and conditions of the authorizations remain a national decision of the authorizing State party.

8. Each State party shall take all necessary measures to guarantee that the *arms* that have been exported are not diverted to the illicit market or unintended user.

B. National authority and systems: imports

9. Importing States shall provide appropriate documentation and other information, including, inter alia, end-user certification, requested by the exporting State to assist the exporting State in its criteria assessment and to verify the delivery to the approved end-user.

10. States parties shall ensure that all arms transferred to their territory as the final destination are recorded and are accompanied by details of the authorization issued in accordance with this Treaty.

11. Each State party shall take all necessary measures to guarantee that the arms that have been imported are not diverted to the illicit market or unintended user.

C. Transit

12. States parties shall record all arms transfers that transit their territory and ensure that they are accompanied by details of the authorization issued in accordance with this Treaty.

13. States parties shall ensure that they have the national authorities needed to inspect or seize shipments that are being transferred in violation of this Treaty, if such action is required.

14. Each State party shall take all appropriate measures to guarantee that the arms transported through its territory are not diverted to the illicit market or unintended user.

D. Transfer denials

15. States parties shall notify the States involved in a denied transfer, as well as the Implementation Support Unit, of authorizations refused in accordance with this Treaty. Notification, which shall be submitted in written form no later than 30 days after the denial, shall contain: (a) a description of the arms; (b) the names of the proposed Recipient State and end-user; and (c) the article(s) of this Treaty pursuant to which the authorization was refused or any other reason for the refusal.

16. The Implementation Support Unit shall distribute denial notices to States parties within 10 days of their receipt.

17. Before any State party authorizes a transfer that is fundamentally the same as a transfer for which it has previously received a refusal notification under the terms of this Treaty, it shall consult with the State party that refused the transfer and take account of any information or reasons provided for the refusal.

18. States parties shall keep such notifications confidential and shall not use them for commercial advantage.

19. Disputes that may arise concerning denials between two or more States parties shall be settled by negotiations between the interested parties.

E. Record keeping, reporting and transparency

20. States parties shall maintain records of all arms authorizations, transfers and denials. Such records may contain, inter alia, information on quantity, model/type, arms transfers authorized and refused, arms actually transferred, details of Transit State(s), Recipient State(s), end-users, etc. Records shall be kept for a minimum of 10 years.

21. States parties shall maintain records of all arms imports and shipments of arms that transit their territory. Such records may contain, inter alia, information on quantity, model/type, arms actually transferred, details of Transit State(s), Exporting State(s), end-users, etc. Records shall be kept for a minimum of 10 years.

22. No later than 180 days after a State's ratification of this Treaty, States parties shall submit an initial report to the Implementation Support Unit of all activities undertaken in order to accomplish the implementation of this Treaty, including, inter alia, domestic laws, regulations and administrative measures.

23. Each State party shall submit annually to the Implementation Support Unit a report for the preceding year concerning the transfer of arms as detailed in articles E.20 and E.21 above, as well as any new national legislation or other measures used to regulate or control the items and transactions under the Treaty's domain and details of denied transfers and grounds for their denials, particularly highlighting cases in which licensing was granted to previously denied importers.

F. Information exchange

24. States parties shall encourage and facilitate international cooperation, including the exchange of information among themselves on matters regarding the implementation and operation of this Treaty. Such exchange of information shall include, inter alia, information on implementation measures as well as information on specific exporters, importers and brokers and on any prosecutions brought domestically, in line with commercial and proprietary protections.

G. Enforcement

Activities inconsistent with the Treaty obligations

25. Each State party shall adopt legislation or other appropriate measures to ensure its ability to enforce domestically the obligations of this Treaty and to prohibit the transfer of arms from any location under that State's jurisdiction and control, unless authorized in accordance with this Treaty.

26. Each State party shall establish effective penalties or other appropriate measures for violations of this Treaty by any entity under its jurisdiction and control.

27. Each State party shall adopt measures as may be necessary to provide for the investigation and prosecution of individuals and other entities for offences violating this Treaty and relevant national laws.

Brokering and corruption

28. States parties shall take all necessary measures to control relevant brokering activities taking place within their territories or by its citizens, regardless of their location of arms, that fall within the scope of this Treaty.

29. States parties shall take all necessary measures to prevent, counter and prosecute corruption, including money-laundering, within their territories and jurisdiction, in connection with arms transfers that fall within the scope of this Treaty.

Law enforcement and cooperation

30. States parties shall develop necessary legislative and administrative measures to enforce this Treaty, including appropriate law enforcement and judicial mechanisms.

31. States parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement institutions to combat violations of the provisions of this Treaty.

Mutual legal assistance

32. States parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the violations of the provisions of this Treaty.

H. Implementation Support Unit

33. This Treaty establishes an Implementation Support Unit to assist States parties in its implementation.

34. The Implementation Support Unit shall:

(a) Serve as the repository for annual reports submitted by States parties as part of their Treaty obligations;

(b) Serve as the repository for reports on disputes on transfer denials;

(c) Assist the Assembly of States Parties in carrying out the activities set forth in this Treaty and make arrangements and provide the necessary services for the sessions of the Assembly of States Parties and subsidiary organs, as necessary;

(d) Assist States parties in providing information to the Assembly of States Parties and each other as envisaged in this Treaty, upon request;

(e) Act as a clearing house for offers and requests of assistance for Treaty implementation under the terms of this Treaty and promote international cooperation to that end;

(f) Ensure the necessary coordination with the Secretariats of relevant international and regional organizations and represent the Arms Trade Treaty Implementation Support Unit in meetings and activities of such organizations, as applicable;

(g) Conduct outreach to increase awareness of the Treaty regime and to promote the universality of this Treaty; and

(h) Perform other technical and administrative duties as assigned by the Assembly of States Parties.

II. Final provisions

A. Depositary and authentic texts

35. The Secretary-General of the United Nations is the depositary of this treaty.

36. The original of this treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

B. Signature, ratification or accession

37. This treaty shall be open to all States for signature on _____ at United Nations Headquarters in New York.

38. This treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Secretary-General of the United Nations.

39. The Secretary-General of the United Nations shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this treaty and the date of the receipt of other notices.

40. Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally this treaty pending its entry into force for that State.

C. Entry into force

41. This treaty shall enter into force on the first day of the month after the ____ day following the date of the deposit of the ____ instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

42. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this treaty, it shall enter into force on the thirtieth day following the date of deposit of their instruments of ratification or accession.

D. Withdrawal and duration

43. This treaty shall be of unlimited duration.

44. A State party may, by written notification addressed to the depositary, withdraw from this Treaty. The withdrawal shall take effect 180 days after the date of receipt of notification, unless the notification specifies a later date.

45. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a party to the Treaty, including any financial obligations.

E. Reservations

46. No reservations that are incompatible with the object and purpose of the present Treaty shall be permitted.

F. Amendments

47. At any time after this Treaty's entry into force, a State party may propose an amendment to this Treaty.

48. Any proposed amendment shall be submitted in writing to the Depositary and the Implementation Support Unit, which will then circulate the proposal to all States parties. Amendments shall be decided upon at the next scheduled review conference.

G. Assembly of States Parties

49. An Assembly of States Parties to this Treaty is established to improve the capacity of States parties to promote and review the implementation of this Treaty.

50. The Assembly of States Parties shall agree upon mechanisms for achieving these objectives, including, inter alia, facilitating activities by States parties under the articles of this Treaty, and facilitating the exchange of information among States parties.

51. The Assembly of States Parties shall convene not later than one year following the entry into force of this Treaty. The Assembly of States Parties shall adopt rules of procedure and rules governing its activities, including frequency of meetings and rules concerning payment of expenses incurred in carrying out those activities.

52. As part of their reporting requirements under article __ of the Treaty, each State party shall provide the Assembly of States Parties, through the Implementation Support Unit, with information on its legislative and administrative measures and those activities required to implement the Treaty before the meeting.

53. For years when a review conference is scheduled, no Assembly of States Parties will be held, and instead, two preparatory committee meetings shall be convened to prepare for the review conference.

54. If circumstances merit, an exceptional meeting of States parties may be convened if required and resources allow.

H. Review conferences

55. A review conference shall be convened five years after the entry into force of this Treaty and every five years thereafter.

56. The review conference is established to improve the capacity of States parties to promote and review the implementation of this Treaty.

57. The preparatory meetings for the review conference shall agree upon mechanisms for achieving these objectives, including, inter alia, facilitating activities by States parties under the articles of this Treaty; cooperating with relevant international and regional organizations and non-governmental organizations; reviewing the implementation of this Treaty; and making recommendations to improve this Treaty and its implementation.

58. The review conference may address the necessity of and procedures for convening an Assembly of States Parties in order to further facilitate effective implementation of the treaty.

59. All States parties shall be invited to the review conference.

I. Consultation

60. States parties may consult each other and request information for any matter regarding the implementation and operation of this Treaty. States parties shall provide information requested in accordance with their domestic legal systems. Requests for consultation or information shall be made in writing to the relevant national contact points.

J. Dispute settlement

61. States parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or interpretation of this Treaty.